

DAVID R. JOHANSON, ESQ. (Bar No. 164141)
JOHANSON BERENSON, LLP
1792 Second Street
Napa, California 94559
Tel: (707) 226-8997
Facsimile: (707) 229-2493
E-Mail: drj@johansonberenson.com
Attorneys for CRYOTECH INTERNATIONAL, INC.

DOUGLAS A. RUBEL, ESQ. (*Pro Hac Vice*)
JOHANSON BERENSON, LLP
201 Shannon Oaks Circle, Suite 200
Cary, North Carolina 27511
Telephone: (919) 654-4544
Facsimile: (919) 654-4545
E-Mail: dar@johansonberenson.com
Attorneys for CRYOTECH INTERNATIONAL, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CRYOTECH INTERNATIONAL, INC., a
Delaware Corporation, fka VBS
INDUSTRIES INCORPORATED

Plaintiff,

vs.

TECHNIFAB PRODUCTS, INC., an Indiana
Corporation; and DOES 1-50 inclusive

Defendants.

Case No. C08 02921 HRL

Complaint filed June 12, 2008

**STIPULATION AND REQUEST FOR
ORDER MODIFYING SCHEDULING
ORDER AND ENLARGING DEADLINES
FOR DISCOVERY AND EXPERT
WITNESS DESIGNATIONS AND
REPORTS**

Magistrate Judge Howard R. Lloyd

As previously noted in the parties' Stipulation and Request For Order Extending Deadlines For Dates Outlines in Case Management Scheduling Order [Doc. No. 31, dated December 17, 2008], the parties exchanged initial written discovery which led to several telephone calls as to how best to exchange information necessary to evaluate the case and maintain confidentiality of confidential and proprietary information, trade secrets, and intellectual property. In the course of those discussions, the parties determined and agreed that an early mediation of the case was indeed possible and perhaps more practical than extended discovery followed by mediation. After further discussion, the parties agreed that if the Court would agree to extend the deadlines for discovery cutoff and expert disclosure, the parties would elect Court

Supervised Mediation and work with the Court appointed mediator to establish a protocol for exchange of documents and information necessary to conduct a meaningful mediation. [Doc. No. 31.]

The Court granted the parties' Stipulation and Request, and modified the Scheduling Order so the deadlines are currently as follows: Fact Discovery Cutoff - March 6, 2009; Expert Witness Designations and Reports - March 20, 2009; Designations of Rebuttal Experts and Reports - April 6, 2009; Expert Discovery Cutoff - May 8, 2009; last day for hearings on dispositive motions - June 9, 2009; and July 14, 2009 - Pre-Trial Conference. Trial is scheduled for July 27, 2009. Scheduling Order dated December 18, 2008 [Doc. No. 32].

The parties did commence "paper" discovery in this case and had scheduled depositions. Further to its Stipulation and Request, the parties agreed to hold in abeyance the depositions and completion of full paper discovery responses pending the parties' mediation, which mediation was held on February 24, 2009, with Mediator Geoff Howard, a court-appointed mediator [Doc. No. 33, dated January 7, 2009].

Instead, as part of the mediation, the parties agreed to conduct "limited" discovery for the purposes of mediation. The "limited" nature of the discovery was to allow the parties to obtain certain information from each other that would aid in the resolution of the case, but would not necessarily encompass all information necessary for a trial.

The parties attended mediation on February 24, 2009, however, they were and have been unable to settle this case. The parties thus request additional time to conduct discovery and to designate expert witnesses and reports, however, they are unable to do so without an enlargement of the deadlines for discovery and expert witness designations and reports. Thus, the parties request an enlargement of the fact discovery cutoff deadline from Friday, March 6, 2009, to Friday, May 29, 2009, an enlargement of the Friday, March 20, 2009, Expert Witness Designations and Reports deadline to Friday, April 17, 2009, and an enlargement of the Monday, April 6, 2009, Designation of Rebuttal Experts and Reports deadline to Thursday, May 14, 2009, and an enlargement of the Expert Discovery deadline from Friday, May 8, 2009, to Friday, May 29, 2009. These requested enlargements will not impact the other deadlines.

Good cause exists for this Court to exercise its discretion and enlarge the times in which the parties have to conduct discovery and designate their experts and reports. The parties diligently prepared for and conducted the mediation on February 24, 2009. The parties were diligent in assisting the Court in creating a workable Rule 16 scheduling order. Their noncompliance with the Scheduling Order's deadlines occurred or will occur notwithstanding diligent efforts to comply because of developments that were not reasonably anticipated at the time of the Rule 16 scheduling conference; and the parties are diligent in seeking an amendment of the Scheduling Order once it became apparent that the parties could not comply with the existing Scheduling Order.

If the Court approves, the Parties would propose the following amended schedule:

EVENT	EXISTING DATE	PROPOSED DATE
Fact Discovery Cutoff	March 6, 2009	May 29, 2009
Designation of Experts With Reports	March 20, 2009	April 17, 2009
Designation of Rebuttal Experts With Reports	April 6, 2009	May 14, 2009
Expert Discovery Cutoff	May 8, 2009	May 29, 2009
Last Day for Hearings on Dispositive Motions	June 9, 2009	June 9, 2009
Final Pre-Trial Conference	July 14, 2009	July 14, 2009
Bench Trial	July 27, 2009	July 27, 2009

IT IS HEREBY STIPULATED:

Respectfully submitted,

JOHANSON BERENSON LLP

Dated: March 3, 2009

By: /s/ Douglas A. Rubel
DOUGLAS A. RUBEL
Attorneys for Plaintiff Cryotech
International, Inc.

ROBINSON & WOOD, INC.

Dated: March 3, 2009

By: /s/ Arthur J. Casey

ARTHUR J. CASEY

Attorneys for Defendant

Technifab Products, Inc.

ORDER

Good cause thereby appearing the Scheduling Order is amended as proposed.

Dated: March 6, 2009



HOWARD L. LLOYD
UNITED STATES MAGISTRATE JUDGE

Certificate of Service

I hereby certify that on March 4, 2009, we filed electronically a true and correct copy of
**STIPULATION AND REQUEST FOR ORDER MODIFYING SCHEDULING ORDER
AND ENLARGING DEADLINES FOR DISCOVERY AND EXPERT WITNESS
DESIGNATIONS AND REPORTS.** Notice of the filing was sent by operation of the Court's
electronic filing system to the parties indicated below. All other parties will be served by
regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

DAVID R. JOHANSON, ESQ.
JOHANSON BERENSON, LLP
1792 Second Street
Napa, California 94559
drj@esop-law.com

ARTHUR J. CASEY, ESQ. (Bar No. 123273)
CARRIE M. DUPIC, ESQ. (Bar No. 240252)
ROBINSON & WOOD, INC.
227 North First Street
San Jose, California 95113-1016
AJC@robinsonwood.com

MARK HASSLER, ESQ. (*Pro Hac Vice*)
HUNT, HASSLER & LORENZ, LLP
100 Cherry Street
Post Office Box 1527
Terre Haute, Indiana 47808-1527
hassler@huntlawfirm.net

/s/ Douglas A. Rubel
DOUGLAS A. RUBEL
Attorneys for Cryotech International, Inc.